

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:)	
)	
UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	2:16-CR-00631DAK
AARON MICHAEL SHAMO,)	
)	
Defendant.)	
)	
-----)	

BEFORE THE HONORABLE DALE A. KIMBALL

May 31, 2019

Motion Hearing

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1 Salt Lake City, Utah May 31, 2019

2 (9:05 a.m.)

3 THE COURT: We're here again this morning in

4 *United States of America versus Aaron Shamo,*

09:12:21 5 2:16-CR-631. For the Government, Mr. Kent Burggraaf,

6 Mr. Vernon Stejskal, and Mr. Michael Gadd. You're

7 back there I couldn't see you.

8 The Defendant is present and represented by

9 his counsel Mr. Greg Skordas, Mr. Daryl Sam, and

09:12:42 10 Ms. Kaytlin Beckett.

11 What do you want to do first today?

12 MS. BECKETT: Your Honor, we do have

13 Mr. Wheeler here so I think it might be appropriate

14 to put him on the stand and deal with the motion to

09:13:00 15 continue.

16 THE COURT: Very good. Mr. Wheeler, come

17 forward and be sworn right here in front of the clerk

18 of court.

19 THE CLERK: Please raise your right hand.

09:13:09 20 **ERIC WHEELER,**

21 called as a witness at the request of the Defendant,

22 having been first duly sworn, was examined

23 and testified as follows:

24 THE WITNESS: Yes.

09:13:18 25 THE CLERK: Please take the stand. Please

1 state your name and spell it for the record.

2 THE WITNESS: Eric Wheeler, E-R-I-C
3 W-H-E-E-L-E-R.

4 THE COURT: You may proceed, Ms. Beckett.

09:13:44 5 MS. BECKETT: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 BY MS. BECKETT:

8 Q. Mr. Wheeler, you were contacted by our office
9 about how long ago to assist in this case?

09:13:54 10 A. I believe the first e-mail interaction between
11 you and I was March 29th, yeah, late March early
12 April.

13 Q. And our specific request for assistance in this
14 case dealt with what, do you remember?

09:14:07 15 A. I think when I spoke to you originally you had
16 mentioned that you had a number of hard drives or the
17 hard drive images that you wanted me to analyze and
18 essentially give it to you in a form that you could
19 search it and essentially create your exhibits for
09:14:26 20 trial.

21 Q. And you do that quite often, correct?

22 A. Yeah, I do that quite often.

23 Q. How long have you been doing that for?

24 A. About 15 years.

09:14:35 25 Q. Is that a lot in the federal court system?

1 A. Yes.

2 Q. So you were retained to look at those particular
3 hard drives and images. And about what time did you
4 receive, if you know, did you receive those external
09:14:51 5 hard drives or images to review?

6 A. I think I got the hard drive -- I actually had a
7 trial, when you called me I was in the middle of
8 prepping for a trial in Centennial, Colorado, and so
9 I wanted to take the hard drive with me so I could
09:15:05 10 look at it in the evenings and kind of get started.
11 Um, but, yeah, I think I -- I think it was probably
12 early April late in the week.

13 Q. And when you received those hard drives, what is
14 your process in, I guess, dealing with the
09:15:24 15 information you're provided? How do you start that
16 process?

17 A. Well, the first process I prioritize, I will ask
18 you what, you know, what you're looking for or what
19 is the -- what are you -- what is the important stuff
09:15:39 20 on here. And then I just essentially begin at the
21 top. I make an index, I will write down the images
22 as I'm going through them, and I'll say, you know, a
23 E01 file is usually the image type that I'll work
24 with. There are a few other variations of the image
09:16:00 25 file types but E01 is the most common especially when

1 I'm working with the RCFL that the government cases
2 that they usually give me L1s. And then I will just
3 kind of take a hard drive, plug it into the software,
4 the software that I use, and then it will take a
09:16:15 5 little while for it to index and to load into the
6 software, and then I will essentially organize it and
7 export the files as a -- that we need.

8 I mean I'll -- the file, the software, is
9 very useful in the way that it organizes the files so
09:16:35 10 that we can extract them by file type and things like
11 that.

12 Q. When you export those files into, I believe you
13 said a database, is that for other individuals to
14 review?

09:16:45 15 A. Exactly, yeah. Because ultimately not everybody
16 has this forensic software that can load these E01
17 files and the ultimate goal is to give it to you in a
18 form that is useful. Because if I were to just give
19 you what they would call logical images which is just
09:17:05 20 dragging and dropping everything from these computers
21 onto hard drives and giving it to you, it would just
22 be millions and millions and millions of just files
23 that you would have to try to review and you wouldn't
24 be able to, you know, find anything. It would just
09:17:17 25 be a giant needle in the haystack.

1 Q. So you used the phrase an E01 file. Can you
2 explain to the court what an E01 file is?

3 A. An E01 file is created when you -- I mean the
4 process that I go through is when someone seizes a
09:17:34 5 hard drive or if something needs to be imaged, you
6 use an imaging software and the imaging software that
7 I use is FTK viewer, or FTK imager, and you take a
8 what they call a write blocker which is essentially a
9 brick that has an input and an output, and then one
09:17:56 10 end is where you plug a hard drive after you extract
11 it from a computer, and then on the outside that you
12 plug it into your laptop and that prevents any data
13 from being transferred to the evidence on the
14 original hard drive because the hard drive you want
09:18:12 15 to maintain its integrity so that you don't -- it is
16 evidence, you don't want it to change at all. And
17 then the output file that you get after it extracts
18 all of the data from it and makes it what they call a
19 physical image or a forensic image or E01 file, it
09:18:28 20 should be an exact clone of the hard drive including
21 deleted files and slack space and everything that you
22 would have.

23 Q. Is it safe to say that a forensic imager or an
24 E01 file is created of a hard drive so that you are
09:18:41 25 not manipulating the actual hard drive and preserving

1 the hard drive itself, instead of messing with that,
2 you can use the E01 file to review it?

3 A. That's exactly right. And that's why you have
4 the write blocker. So that the original hard drive
09:18:54 5 the integrity of it remains and you don't have to
6 work from it.

7 Q. Mr. Wheeler, I apologize I got a little bit ahead
8 of myself. Can we talk a little bit about your
9 qualifications. What is it -- how did you start
09:19:07 10 getting involved in doing this type of work?

11 A. Well, I graduated from Utah State with a degree
12 in graphics and this was back in 2001 and I started
13 working for a company that did a lot of trial
14 demonstratives and things like that. And I quickly
09:19:25 15 became their IT manager I suppose you would call me.
16 And the individual I was working with was doing a lot
17 of trial presentations and things like that and
18 working with trial preparations and eDiscovery was
19 just kind of up and coming. So they had me go to a
09:19:43 20 few different training and I got certified in some of
21 the software that you use including this access data
22 and the Forensic ToolKit and, um, I, you know,
23 LexisNexis, I got certified in LexisNexis there,
24 their software as well. There is a few different
09:20:01 25 eDiscovery tools they have as well. And I mean there

1 is -- there is -- now there is quite a bit, but back
2 then there was probably just a handful.

3 Q. And how many trials would you say you have been
4 involved in if you had to estimate?

09:20:13 5 A. Well trials, I -- I have probably -- I could
6 probably in my head do the math I think I probably
7 average five to eight trials a year, it has tapered
8 down a little bit, but I would say probably 100, 120
9 trials.

09:20:31 10 Q. And for cases that don't go to trial where you
11 just assist in this forensic review or computer
12 analysis, how many of those would you say you have
13 been involved in?

14 A. Hundreds. Hundreds of them.

09:20:44 15 Q. Over the last 15 years you said, I believe?

16 A. Yes. Yes.

17 MS. BECKETT: Okay. I am more than happy to
18 go into Mr. Wheeler's qualifications if the Court
19 would like some more clarification on that or if that
09:20:55 20 is necessary at this point, Your Honor.

21 THE COURT: I don't think it is necessary at
22 this point.

23 MS. BECKETT: Thank you, Your Honor.

24 Q. (By Ms. Beckett) So let's get back to this E01
09:21:03 25 file. So when you received that E01 file, I believe

1 you said it is your process to take that information
2 and put it into a format that is easy for some of us
3 attorneys or paralegals a little easier for us to
4 process. And what does that entail?

09:21:19 5 A. So after I have extracted all of the files that I
6 deem that could be potentially useful for trial from
7 the image, I then what they call process them which
8 is it means that you go through and you OCR them
9 which means extract the text, if there is text to
09:21:38 10 extract, read the characters, creates a text file
11 that goes with each file, image it, meaning it is
12 also a different image, this is called tiffing or
13 something which then creates a kind of a copy of the
14 file so you are not working from the native, there is
09:21:52 15 also something you can call a native review which
16 just means the original file like if you're working
17 with an Excel spreadsheet, you know, the file
18 extension type would be XLS or XLX.

19 Q. So if you double click to open that --

09:22:08 20 THE COURT: Don't talk at the same time.

21 Q. (By Ms. Beckett) I apologize, Your Honor. If
22 you double click to open one of those images in its
23 native format if it were an excel file it would open
24 as an excel file?

09:22:18 25 A. Yeah, in excel or something like that.

1 Q. If it were a pdf it would open in a pdf format?

2 A. Yes, and in Acrobat, yeah.

3 Q. So it is a fairly detailed process you would say?

4 A. Yeah. The process is a somewhat arduous. I mean
09:22:34 5 there is a lot of protocol that you do. And the
6 reason why is so you don't lose anything, you don't
7 miss anything. And, um, like I say, ultimately you
8 want to get it to the lawyers, to the counsel, in a
9 form that is useful to them.

09:22:52 10 Q. When you were first provided the hard drives in
11 this particular matter, do you remember the amount of
12 data that was on the hard drive that you received?

13 A. Um, from you?

14 Q. Correct.

09:23:06 15 A. I think the total amount was somewhere around six
16 terabytes.

17 Q. And that included what?

18 A. I think there was three folders on the root of
19 the hard drive and one said to be reviewed and then
09:23:25 20 one was a backup from the original, I think the
21 manufacturer of the hard drive, and then there was
22 another one that said Shamo. And then within each of
23 those, I think that for -- for the first folder
24 contained Paz or Paz's hard drives and computers, and
09:23:47 25 Crandall stuff as well.

1 Q. And you were specifically asked to review those,
2 correct?

3 A. Yes.

4 Q. After you received that information, did you make
09:23:57 5 what we would call a native file request to the U.S.
6 Attorney's Office?

7 A. Yes.

8 Q. And what is a native file request?

9 A. Well, the native file request is -- was done, it
09:24:08 10 is something that I usually do when I am working with
11 a government case, is originally they would try to
12 give me load files so .dat files from their -- they
13 would extract from their database so we would be able
14 to work from the same exhibits or the same files on
09:24:25 15 each side and have a copy. But there was a -- there
16 was a problem with, you know, work product and so
17 they said well let's just, you know, to avoid the
18 problem of having to, you know, maybe use someone's
19 work product they would just give me the native files
09:24:42 20 and then I would create my own database from it.

21 Q. Is that something that you commonly do, make
22 native file requests?

23 A. I think I have done it in every trial I have done
24 with the government.

09:24:53 25 Q. Did you receive native files in this case?

1 A. I did.

2 Q. About how many native files did you receive?

3 A. I think after I loaded the files into a database
4 I think it was around 6,500.

09:25:05 5 Q. Around early May of this year do you remember
6 receiving an e-mail from co-counsel on this case
7 Daryl Sam?

8 A. Yes.

9 Q. Do you remember that e-mail regarding exhibits?

09:25:20 10 A. Yes.

11 Q. Do you remember what Mr. Sam asked of you in that
12 e-mail?

13 A. I think he was inquiring to me as to he couldn't
14 find a specific document and so I was saying all
09:25:35 15 right, well let me go look into the database that I
16 created and see if I can find it in the native files
17 that the Government had given to us, you know,
18 because I'm assuming that at the very least it is
19 going to be there, and I couldn't find anything. And
09:25:47 20 I am like, well, there is a few variables that go in
21 to the reason why you wouldn't be able to find an
22 exhibit, perhaps it got a bad OCR, it couldn't read
23 the text very well or, you know, something like that.
24 So then I started to kind of inquire around where the
09:26:03 25 -- where the files had come from and I called the

1 U.S. Attorney's Office and asked them if they could
2 give me a little bit more of a roadmap where they got
3 these files from.

4 Q. And these particular files, do you recall what
09:26:17 5 these exhibits were that Mr. Sam asked you about?

6 A. I mean I didn't -- it seems like a lot of
7 screenshots of phones and note files or screenshots
8 of note files from phones or mobile devices.

9 Q. And when you contacted the U.S. Attorney's
09:26:35 10 Office, did they inform you where they had retrieved
11 those particular exhibits from.

12 A. I believe the first thing -- they weren't exactly
13 sure but then I think they came to the conclusion
14 that they were on Luke Paz's iMac or the image of his
09:26:51 15 iMac.

16 Q. And when you were told that, what did you do?

17 A. I quickly went to my files and looked in the iMac
18 -- the first thing -- my worst nightmare is missing
19 something, you know, so I was like, oh, great, I
09:27:04 20 missed some really important files. So I went to
21 look into the -- the iMac folder because there was
22 actually a folder that said Luke Paz's iMac. And in
23 it there was nothing. There was literally 10
24 gigabytes of like some photos and there was 3 DMG
09:27:20 25 files which is essentially a backup file.

1 Q. Was there an E01 file in there?

2 A. There was no E01 file.

3 Q. There was no forensic image of that iMac?

4 A. No, there was not.

09:27:30 5 Q. Did you then inquire of our office as to whether
6 or not we had a copy of the E01 file?

7 A. Yes, I think that was that day was -- I called
8 you, as well, and asked if you had something -- I
9 think what I asked is what was in your Luke Paz iMac

09:27:45 10 folder and that you had the exact same thing as me.

11 Q. We compared those files and they were the same?

12 A. Yes.

13 Q. After that, did you make contact with the U.S.
14 Attorney's Office again?

09:27:54 15 A. I did. I think I then spoke to Mike over there,
16 or I got an e-mail transfer I mean a correlation with
17 him and he confirmed that they had come from the iMac
18 image and I said well, I don't have an iMac image.

19 And that he was saying that you had one. And then I
09:28:14 20 called I think I called you again and we were looking
21 together on your -- on the original hard drives that
22 you received from the Government.

23 Q. Do you remember receiving some e-mail
24 correspondence from the U.S. Attorney's Office
09:28:24 25 regarding what they believe the proper file size

1 should have been of those particular files?

2 A. I do think -- and it is very common. I mean one
3 of the first things you will do, if you want to make
4 sure that you have a good image or a good, you know,
09:28:39 5 a good copy of a folder, is to check the file size.

6 And I think that in that e-mail correlation he had
7 mentioned somewhere around 1.8 terabytes or something
8 like that.

9 Q. And that was significantly less than what you had
09:28:52 10 at that point in time, correct?

11 A. Well, that -- the 1.8 terabyte of just Paz stuff
12 was more than I had. I mean I -- my total of his
13 stuff with all of his files and stuff was, I think,
14 around one terabyte.

09:29:09 15 Q. Did you request a new copy of that information or
16 that forensic image from the U.S. Attorney's Office?

17 A. I did. I knew that it was important and I wanted
18 to make sure I knew trial was coming up and I wanted
19 to make sure that you guys had this stuff so could
09:29:27 20 you review it and, you know, you could use it for
21 trial.

22 Q. How long would it take you to go through your
23 process with just 1.8 terabytes of information?

24 A. Well, like I guess it depends on how many hours a
09:29:39 25 day I work on it. I mean I think I have been working

1 on it, you know, a few hours a day. I have other
2 projects so I haven't been working around the clock
3 and I'm not going to, you know, pretend that I have
4 been, but I think that in the last month I have gone
09:29:53 5 through about, I think about that, about two
6 terabytes of stuff.

7 Q. Because you have the other cases that you have to
8 work on, you have other things that -- this isn't
9 your top priority?

09:30:05 10 A. Yeah. And the process it takes a while. You
11 take the E01 file and it takes a little while to load
12 into the software. And if it is a really big file it
13 will take overnight. And then the next day I will
14 come in or I'll remote in to my work computer and
09:30:19 15 I'll start to kind of analyze it and go through it.
16 And then like I say, extracting files and kind of
17 looking and seeing what is on the hard drive.

18 Q. Did you ultimately receive or were you ultimately
19 able to make contact with the U.S. Attorney's Office
09:30:35 20 and request a new copy of a hard drive or of those
21 hard drives?

22 A. Yes. I -- that same day I ran to the store and I
23 grabbed as big an external hard drive as I could
24 find, an eight terabyte, because I wanted to make
09:30:50 25 sure that I had a good copy of the E01s. And I was

1 also anxious that the files that I actually had might
2 have some problems as well so I wanted to make sure
3 that I had good copies and I wanted to go directly to
4 the Government. So I dropped off a hard drive for
09:31:05 5 them to copy the files they had for me.

6 Q. Do you remember receiving an e-mail from the U.S.
7 Attorney's Office about whether or not they still had
8 the original hard drives that our files had been
9 copied from?

09:31:18 10 A. I think I vaguely remember them saying that it
11 had been a while and they might have retired them or
12 I can't remember the term that they used so they
13 weren't even -- I think they thought they might have
14 had to back everything up to tape and it would have
09:31:33 15 been kind of a process for them to get the original
16 E01 files.

17 Q. Do you remember a follow-up e-mail from the U.S.
18 Attorney's Office where they indicated that they in
19 fact had located those hard drives?

09:31:43 20 A. Yes.

21 Q. And do you remember a follow-up e-mail from the
22 U.S. Attorney's Office where they indicated that
23 those hard drives actually contained that Luke Paz
24 iMac but it was split over three separate hard
09:31:58 25 drives?

1 A. Yes, I think I remember that. Yeah.

2 Q. And you provided the U.S. Attorney's Office with
3 an external hard drive, correct?

4 A. Yes.

09:32:05 5 Q. And how large was that external hard drive?

6 A. Eight terabyte.

7 Q. When you ultimately -- when did you ultimately
8 receive the -- your eight terabyte hard drive back
9 from the U.S. Attorney's Office?

09:32:18 10 A. I think it took a little while because I mean
11 that is a lot of data and, um, I think it took over
12 the weekend. I mean I think it was about 4 or 5 days
13 for them to copy everything over.

14 Q. Do you estimate you had it maybe Tuesday or
09:32:34 15 Wednesday of this week?

16 A. Yes.

17 Q. Were you able to review the information they gave
18 you on that hard drive?

19 A. Well, as soon as I had the hard drive, I quickly
09:32:42 20 ran and plugged it in just to make sure that it was
21 different because I was having nightmares that I had
22 missed something, you know. So the first thing I did
23 was I plugged it in to look at it and compare what
24 you had given me with what they had just given me.
09:32:55 25 And the first thing I noticed was what they had just

1 given me was about three times as large.

2 Q. In size?

3 A. In file size.

4 Q. Were you able to locate the Luke Paz iMac folder?

09:33:10 5 A. I could not find that same folder. There was not
6 a folder in there called Luke Paz iMac. But there
7 was, on the root of the hard drive, a folder called
8 image which I am assuming is the Luke Paz iMac.

9 Q. How large was that file?

09:33:26 10 A. That file was about, I think itself, about three
11 terabytes.

12 Q. Significantly larger than the 1.9 terabytes,
13 correct?

14 A. Yes.

09:33:37 15 Q. And that 1.9 or 1.8 terabytes was supposed to
16 represent everything the U.S. Attorney's Office said
17 they had regarding both Drew Crandall and Luke Paz,
18 correct?

19 A. Yes.

09:33:49 20 Q. How long would it take you to process the nearly
21 three terabytes of data just on Mr. Paz's iMac to get
22 it to a format for our office to review?

23 A. Well, I mean a lot of it depends on the files
24 that are on the hard drive. I mean sometimes you get
09:34:07 25 a lot of movies, a lot of music and things like that,

1 but you -- just to -- just to give you some ideas, I
2 mean three terabytes of data if you were to take that
3 and put it into like a library, that's a roomful of
4 documents.

09:34:24 5 Q. For an attorney to review it though it would need
6 to be in a format to be able to even tell what those
7 files are, correct?

8 A. Exactly. Like I say, lawyers don't have the
9 software and the software is expensive to use to even
09:34:38 10 look at E01 files and to extract them and extract
11 files from them. So for me to get into a database,
12 that much, and I mean it is hard to estimate. I mean
13 I guess that it took me about a month to do two
14 terabytes of stuff, provided I work around the clock
09:34:57 15 it would take me a few weeks, I would say, and then
16 that would just be the first step and then I would
17 send it out to get processed and then I would receive
18 it back within probably a few days or maybe a week
19 and then I would load it into a database and then you
09:35:13 20 and your office could analyze it.

21 Q. All right. I'm going to have you backtrack a
22 little bit. So the original hard drive that you
23 received from our office, the file sizes on there
24 were significantly smaller, correct?

09:35:28 25 A. Yes. And I have a -- I'm sorry I keep reaching

1 for my bag, I have got a list of everything on here
2 if I could use it for better reference on the file
3 sizes.

4 Q. Would that help refresh your recollection?

09:35:40 5 A. Yes, it would.

6 Q. Feel free to look at that. So you have a
7 document in front of you, correct?

8 A. Yes, I have a little bit of a spreadsheet that I
9 made.

09:35:54 10 Q. I believe that was attached to the motion that
11 was filed yesterday, but I do have physical copies
12 for the Court if that is helpful at all. I believe
13 you guys have seen that.

14 MR. BURGGRAAF: I have a copy.

09:36:06 15 THE COURT: That was attached, right?

16 MS. BECKETT: Correct, Your Honor.

17 Q. (By Ms. Beckett) So you have two separate dates
18 on here. At the tope I believe it says discovery
19 received 4-1?

09:36:17 20 A. Yes.

21 Q. And then discovery received 5-28?

22 A. Yes.

23 Q. And then you just did a general comparison of the
24 size difference under the size category, correct?

09:36:26 25 A. Yes.

1 Q. What was your overall conclusion about the size
2 difference just for the information regarding Mr. Paz
3 and Mr. Crandall?

4 A. Well, the first thing I noticed is that we did
09:36:35 5 have quite a bit of the same files and the E01 files
6 did match up with what you had given me. And as I
7 went through I even -- they even had the same serial
8 number and the Bates numbers that were assigned to
9 them. But then I noticed there were two files in
09:36:53 10 particular that were extremely big that I had not
11 seen before and that was the image file and then a
12 Seagate external hard drive.

13 Q. Do you remember an e-mail correspondence from the
14 U.S. Attorney's Office that indicated there was a
09:37:07 15 need for verification and specific software to
16 transfer computer files?

17 A. Yes.

18 Q. Is it a requirement to have verification and
19 specific software and/or specific software to
09:37:16 20 transfer computer files like that?

21 A. I mean I don't know if you would say required, I
22 use one myself. But I mean it is just essentially
23 just to verify that you -- that you copied everything
24 over and I do it when there are particularly large
09:37:31 25 hard drives that I'm trying to copy.

1 Q. If there were an issue with verifying the proper
2 copying of computer files from one hard drive to
3 another, would you see an entire E01 file missing or
4 would it look differently than just an entire missing
09:37:47 5 E01 file?

6 A. No. No usually what you'll see is that it will
7 keep the folder name but the contents of the folder
8 will be empty or missing a few files so they wouldn't
9 line up. Meaning if there was a problem when you
09:37:59 10 were copying the files, then the -- the folders would
11 say the same name but the file size would be
12 different.

13 Q. But you've indicated from your report here that
14 there were only two complete items missing, there
09:38:13 15 weren't random files, there were two complete files
16 that were just --

17 A. Yes, exactly. And I also noted that on the hard
18 drive that you had originally given me there was a
19 Luke Paz iMac folder which was not contained on what
09:38:29 20 they had given me.

21 Q. Completely different file name?

22 A. Completely different folder name, yeah.

23 Q. Do you remember contacting the U.S. Attorney's
24 Office about an encrypted image on the hard drive we
09:38:40 25 provided you?

1 A. Yes, I did.

2 Q. Was that an E01 file?

3 A. It was.

4 Q. And that E01 file would be just a forensic image
09:38:51 5 of a computer?

6 A. Yes, it is a -- specifically, I have it right
7 here, Mac Book Pro and then I have the number that
8 was given by the government L2_002A.

9 Q. Is that a large file?

09:39:02 10 A. Yes. It is 181 gigabytes.

11 Q. Who did that particular forensic image attach to?
12 What defendant in this case or co-conspirator?

13 A. That's Paz as well.

14 Q. When you contacted the U.S. Attorney's Office to
09:39:14 15 ask them about why that image was encrypted, what
16 were you informed?

17 A. I think the first thing they said was nothing
18 they had was encrypted, and then I said okay, well,
19 um, you know, maybe I got a bad, I don't know, they
09:39:27 20 said they didn't have anything encrypted. And then I
21 think I received another e-mail saying that their
22 version was encrypted as well.

23 Q. Who creates an E01 file?

24 A. Whoever seizes the hard drive.

09:39:45 25 Q. Because as we established earlier the purpose of

1 having an E01 file is for a forensic review of the
2 computer?

3 A. Exactly, yeah. People don't make E01s of their
4 own computers.

09:39:55 5 Q. Does it require a certain amount of technical or
6 computer knowledge to create an E01 file.

7 A. Well, it takes a little bit but it also takes the
8 software that it needs for that.

9 Q. And that is expensive software?

09:40:05 10 A. The imaging software is not as expensive, the
11 analysis software is.

12 Q. Have you ever come across an E01 file that was
13 created by a defendant?

14 A. I don't think he would use it. No, I have not.

09:40:20 15 Q. Because normally an individual would just have a
16 copy of their own hard drive they wouldn't need a
17 forensic image, correct?

18 A. Yeah, and I don't think that they would trust an
19 image that was created by a defendant of their own
09:40:30 20 computer.

21 Q. And if you have a forensic image, is it common
22 practice to encrypt that forensic image once you make
23 it?

24 A. It is not uncommon. I mean I get encrypted files
09:40:43 25 from the government quite a bit. Their security is

1 pretty locked down.

2 Q. So it would be your opinion that the encryption
3 that occurred on that particular file was something
4 that was done by a forensic reviewer?

09:40:55 5 A. Yeah, I would imagine that that would have to.

6 MS. BECKETT: If I could have just one
7 second, Your Honor.

8 THE COURT: Sure.

9 MS. BECKETT: I have no further questions at
09:41:19 10 this time, Your Honor.

11 THE COURT: Thank you, Ms. Beckett.

12 Mr. Burggraaf, you may cross-examine.

13 MR. BURGGRAAF: May I have just a moment,
14 Your Honor?

09:41:33 15 THE COURT: Sure.

16 **CROSS EXAMINATION**

17 BY MR. BURGGRAAF:

18 Q. Good morning, Mr. Wheeler.

19 A. Good morning.

09:41:48 20 Q. You had mentioned you had a conversation with
21 someone at the U.S. Attorney's Office. At one point
22 you mentioned Mr. Gadd. Is it possible that you also
23 spoke with myself, Kent Burggraaf?

24 A. Yeah, I think we had a conference call when I was
09:42:03 25 in my car, yeah.

1 Q. Okay. That would confirm my memory as well.

2 A few questions. First I just want to jump
3 back to your qualifications. Can you tell me what
4 forensic computer software certifications you have
09:42:22 5 other than from AD Lab?

6 A. Um, I have access data the Forensic ToolKit, is
7 that what you're talking about from the AD Lab?

8 Q. So other than that, do you have certifications in
9 any other computer forensic software?

09:42:37 10 A. Not forensic software, no.

11 Q. Do you have experience using any other forensic
12 software?

13 A. Yeah, like say LexisNexis has a software called
14 Law that does essentially the same thing but I
09:42:51 15 wouldn't know that -- I don't know that I would
16 classify it as a forensic software, it is more of an
17 eDiscovery tool or processing tool.

18 Q. Would you consider computer forensics different
19 than dealing with eDiscovery?

09:43:04 20 A. Yeah in -- in some sense. Usually forensics you
21 work from a physical image or a forensic image and
22 you are dealing with deleted files and sometimes you
23 have to do things like decrypt things and create a
24 dictionary of hard drives and things like that.

09:43:22 25 Q. Um, you mentioned that you have been involved

1 with between 100 and 120 trials; is that correct?

2 A. Presented for, yeah, that's been in trial
3 presenting for about 120 cases.

4 Q. Of those cases, how many times have you testified
09:43:41 5 as a computer expert?

6 A. Um, probably just three or four times.

7 Q. And of those three or four times, how many times
8 were you testifying in federal court?

9 A. I think every time.

09:43:57 10 Q. Every time, okay. Do you have any publications
11 related to computer forensics?

12 A. No.

13 Q. How many computer forensic examinations have you
14 done of a computer?

09:44:12 15 A. How many forensic examinations? I would probably
16 say close to 50.

17 Q. And how about of cell phones?

18 A. When you say -- I mean 50 cases. So how many
19 total like actual devices?

09:44:26 20 Q. Yeah. How many devices have you gone through the
21 process that you described?

22 A. Hundreds. Hundreds of them.

23 Q. Hundreds. And what was the software that you --
24 well, let me clarify, did you use FTK, Forensic
09:44:39 25 ToolKit, for each one of those?

1 A. Essentially. There is also a software that the
2 government will give me quite a bit that I use is
3 Cellebrite as well.

4 Q. Now, do you use Cellebrite for computer images?

09:44:53 5 A. No, that's for cell phones and things like that.

6 Q. So when you're talking about hundreds of computer
7 forensic examinations, are you lumping in cell phones
8 as well?

9 A. Yes.

09:45:01 10 Q. So excluding the cell phone forensic
11 examinations, how many computer?

12 A. I would still say hundreds. I mean usually there
13 is less cell phones, there will be a few on there,
14 but, yeah, I probably would say -- I mean I probably
09:45:14 15 see a lot less cell phones than I do hard drives.

16 Q. Have you used any -- as far as the computers go,
17 have you ever used forensic software other than
18 Forensic ToolKit to perform your examinations?

19 A. I have tried a few others. There is a lot of
09:45:30 20 proprietary or a lot of software that people will
21 create themselves, that they will -- I'll get
22 promotions for and I'll give them a shot. I have
23 tried, I think, a few. I'm trying to think of some
24 of the names. WestLaw has one that I used. There is
09:45:48 25 a few other software for, you know, undeleting

1 software, undeleting files that you have on the
2 computer. And there is, I think, a few other
3 decryption software that I have used but I found that
4 FTK -- I mean it is the same software that the
09:46:04 5 government uses essentially.

6 Q. What version of FTK do you use?

7 A. The most recent. I can't remember what version
8 it is, but if you have your dongle they -- you would
9 receive updates yearly or quite often actually.

09:46:19 10 Q. When using the most recent version, how do you
11 account for any bugs in the software?

12 A. Accounting for bugs? Can you be more specific?

13 Q. Well, they come up with new versions of software
14 because they find bugs in the software. Is that one
09:46:35 15 reason for it?

16 A. Or they have new features. Or I mean just like
17 your iTunes you would get updates quite often.

18 Q. Are you aware of the errors or prior bugs in
19 Forensic -- the Forensic ToolKit software?

09:46:47 20 A. I think most of the problems are stability. If
21 you're loading files sometimes the software will
22 freeze or crash.

23 Q. So in using the most recent version it would be a
24 little bit difficult to know right up front what bugs
09:47:01 25 exist in the software. Is that an accurate

1 statement?

2 A. Yeah. I don't usually read the logs of the
3 updates in detail. Sometimes it will just tell you,
4 give you a list of things that potentially people
09:47:15 5 have had problems with. Like I say, the -- the main
6 issues that I have had problems with is maybe
7 stability. I haven't had any problems with the --
8 with the -- I mean other bugs than that.

9 Q. When you used the most recent version, do you
09:47:29 10 download a new copy each time you use it?

11 A. I think it automatically will download for you.
12 The way the software works is that it gives you a
13 dongle or a USB like a kind of like a flash drive
14 that you plug into your computer and it has all the
09:47:43 15 license information on it. So if you have that
16 plugged into a computer, it will automatically update
17 your license. I mean you can change the settings on
18 the -- on your software so that you will, you know,
19 you can say yes or no to an update to the software
09:47:58 20 but I always just let it update by itself.

21 Q. Do you ever review the bug reports for the
22 software?

23 A. No. Like I say, I don't usually read them.

24 Q. So you're not aware of the past bug issues with
09:48:13 25 the software when you're utilizing it?

1 A. If you have a specific bug I probably am not
2 aware of it.

3 Q. As far as using FTK, what do you do to verify
4 that it is working correctly and not changing or
09:48:30 5 modifying metadata or the data generally?

6 A. Well, I've never had it change metadata on a file
7 when it exports it. That is the whole reason why it
8 works from an image. And then the software is
9 designed to maintain that integrity. I mean it
09:48:46 10 creates hashtag -- MD5 Hash files after you create an
11 image so that you make sure that you don't do that,
12 that you're not -- I mean that's really important
13 that you don't work directly from the original hard
14 drives because you don't want the meta files and the
09:49:02 15 metadata all to be modified in any way.

16 Q. What is an MD5 Hash?

17 A. A hash is -- essentially it is a hexadecimal like
18 code that you first before you image a hard drive, it
19 creates a MD5 Hash of the data on that hard drive and
09:49:21 20 it essentially is a -- I mean like a 32 character
21 number that, you know, both letters and numbers. And
22 then after you image the file, you run it again. And
23 if the two MD5 files match up, then you know you have
24 a good image.

09:49:37 25 Q. Is there any error rate with an MD5 Hash?

1 THE COURT: What?

2 THE WITNESS: I think there is.

3 MR. BURGGRAAF: I'm sorry?

4 THE COURT: Error rate.

09:49:48 5 Q. (By Mr. Burggraaf) Yes, error rate, Your Honor.

6 A. I think they did mention there was a slight
7 error, but I don't know of any other more accurate
8 way of verifying an image than an MD5. In fact, I
9 think that every time the government gives me an E01
09:49:59 10 file there is usually an MD5 file in that same
11 folder.

12 Q. Okay. What type of work station do you use for
13 processing an E01 file?

14 A. I've just been using my windows machine that I
09:50:15 15 have at my office and it's pretty good, it is an i7,
16 it is good computer. I also have a Xeon server that
17 I have used if I use very large stuff. But, um, my
18 i7 does handle it pretty well. I think it just
19 depends on how good your hard drive re-grid is, it
09:50:34 20 helps.

21 Q. On your i7, is that what you intend to use to
22 examine the image file that you referenced on direct?

23 A. Yes.

24 Q. Is that a stand-alone work station?

09:50:45 25 A. Yes.

1 Q. So while that's processing, do you use it for
2 anything else?

3 A. You can use it for other things, for everything
4 else. I know that the government, one thing that is
09:50:54 5 neat about the Access Data Software is you can also
6 do something called farming, which I -- I don't. You
7 have to have multiple licenses of the software and
8 the software is relatively expensive, but that's the
9 way you could process it, the only way you could
09:51:08 10 process it faster than with an individual stand-alone
11 computer.

12 Q. Do you know the specs of that i7 that you're
13 using?

14 A. I can't tell you the megahertz of it. I know it
09:51:21 15 is a couple of years old but I think it is a 4600k.
16 I think that's the -- that is the processor number.

17 Q. Um, do you know the -- do you know the size of
18 the RAM, R-A-M, all caps?

19 A. I think I have about 32. Yeah, 32 gigs of RAM.

09:51:44 20 Q. And do you know how many cores, C-O-R-E-S, the
21 CPU has?

22 A. I think it is an eight core but I can't remember
23 exactly.

24 Q. Are you aware of what the minimum specs are for
09:51:55 25 the current version of Forensic ToolKit?

1 A. No, but I -- usually they go back quite a ways.
2 I mean I'm sure my soft -- my computer meets the
3 minimum requirements.

4 Q. Have you -- so you're not aware that the current
09:52:15 5 minimum specs for Forensic ToolKit version 6.3
6 require 48 cores for the CPU, 96 gig of RAM, and an
7 operating system drive of 7200?

8 A. Now, are you referring to Lab, FTK Lab, or FTK
9 Kit, like just a plain Forensic ToolKit?

09:52:39 10 Q. Tool, Forensic ToolKit?

11 A. Yeah, I would imagine that sounds like you would
12 have to use a server.

13 Q. But you aren't intending to use a server in this
14 case?

09:52:48 15 A. No.

16 Q. What happens with that kind of software as far as
17 the time to process when you're not using a computer
18 with the minimum specs that they outline?

19 A. Well, I mean you would start to see a lot more
09:53:02 20 crashing and things like that. Essentially you
21 wouldn't be able to load things because the computer
22 wouldn't be able to handle that amount of data.

23 Q. Would it slow down the process if it actually
24 works?

09:53:17 25 A. Yeah, I think it would probably slow down quite a

1 bit.

2 Q. I mean with the processing speed, if you don't
3 have a sufficient processing speed that means that
4 the process is going to take longer.

09:53:27 5 A. Yeah.

6 Q. Okay.

7 MR. BURGGRAAF: If I may approach, Your
8 Honor.

9 THE COURT: You may.

09:53:36 10 Q. (By Mr. Burggraaf) Mr. Wheeler, I have handed
11 you what the Government has used to document an
12 inventory of several Addonics hard drives. On Page 1
13 if you would look there is a part circled in red?

14 A. Yeah.

09:54:14 15 Q. What does that say?

16 A. Image.

17 Q. On your direct testimony you stated that on the
18 recent hard drive or the files that were given to you
19 that there was a file called image; is that correct?

09:54:26 20 A. A folder. Yeah, a folder called image.

21 Q. If you look down below that, do you recognize --
22 I assume you have already looked at that image file;
23 is that right?

24 A. I looked at the size of it, I started putting it
09:54:39 25 into my computer but I haven't really analyzed it

1 yet.

2 Q. Did you look inside of the folder though and see
3 any of those files that you see down below that is
4 circled image folder?

09:54:50 5 A. Yes, there were E01 files in there and I did see
6 that they -- yes, they also had that folder Disc 2,
7 2008 which I think is the date I think it was copied.

8 Q. If you would turn to the second page, there is a
9 second file folder circled. Do you see that?

09:55:07 10 A. Yes.

11 Q. And what is the title on that?

12 A. Image continued I think or miles -- is that an I?

13 Q. The one that is specifically circled?

14 A. Oh, just image continued, yeah.

09:55:21 15 Q. Okay. Now within that image continued folder,
16 there is several files down below. Do you recognize
17 those file types?

18 A. Yeah.

19 Q. And what type of files are those?

09:55:33 20 A. FSA, SFB, and things like that.

21 Q. Okay. Thank you. If I may retrieve it.

22 Now, I want to just address a couple of
23 points that you brought up while defense counsel was
24 asking you questions. How current is your Forensic
09:56:08 25 ToolKit certification?

1 A. How current is it? Well, I haven't got it
2 renewed, is that what you mean, since I originally
3 was certified.

4 Q. Yes.

09:56:19 5 A. I think in my training -- yeah, I haven't got
6 retrained.

7 Q. So when is your certification for that?

8 A. When? I would say when the -- when the software
9 was relatively new. I think it was probably -- it
09:56:36 10 has been probably 12 years or so.

11 Q. Have you had any followup training for Forensic
12 ToolKit since you were originally certified?

13 A. No, I have not.

14 Q. You said that new versions often times have new
09:56:54 15 features; is that right?

16 A. Yeah.

17 Q. But you haven't been trained on any of those new
18 features; is that correct?

19 A. I have not been specifically trained on any of
09:57:03 20 the new features.

21 Q. You mentioned that you received hard drives, and
22 you said towards the beginning of April you received
23 hard drives from defense counsel with approximately
24 six terabytes of data; is that right?

09:57:17 25 A. So repeat that question again.

1 Q. You said that at the beginning of April you
2 received hard drives from the defense counsel that
3 included about six terabytes of data. Is that
4 correct?

09:57:30 5 A. I received one external hard drive that contained
6 multiple images of hard drives on it.

7 Q. Okay. So one hard drive and that is all you
8 received from defense counsel initially?

9 A. Exactly.

09:57:43 10 Q. Okay. Did you prepare that hard drive prior to
11 files being transferred to it?

12 A. Prepare it in what way?

13 Q. Like what condition did it come to you in? Did
14 it already have data on it or was it a blank hard
09:57:56 15 drive and then you made a copy of something?

16 A. No. The hard drive was just given to me with
17 data on it.

18 Q. Okay. So the E01 files and other files that were
19 on the hard drive, were you the one who did any sort
09:58:08 20 of copying from the drives that defense counsel had
21 in their possession?

22 A. No, I was not.

23 Q. Okay. And you said in response to defense
24 counsel's question about verification, um, you said
09:58:23 25 it is not necessary but that you use a verification

1 process to confirm files copy over correctly; is that
2 right?

3 A. I do.

4 Q. Why -- why do you use that verification process?

09:58:35 5 A. Well, it's anybody that has worked with a logical
6 computer images, meaning the file, just dragging and
7 dropping sometimes you get errors and sometimes
8 things don't copy over correctly.

9 Q. Okay. When you have dealt with eDiscovery
09:58:53 10 before, are you normally the one who transfers or
11 copies files over that are provided by the other
12 side?

13 A. No. Usually the Government will give them to me.
14 Sometimes the Government will make a copy and then
09:59:06 15 give one to me and one to counsel, but seldom do I do
16 it.

17 Q. So in your practice, how often is it that defense
18 counsel makes the copy of the large discovery data?

19 A. I think it is fairly common.

09:59:21 20 Q. Okay. And have you come across an error like
21 this before when that has happened where files have
22 been missing?

23 A. Yeah, I think it happens sometimes, yeah.

24 Q. Okay. You mentioned that when you contacted the
09:59:35 25 U.S. Attorney's Office that they may have mentioned

1 that the hard drives may have been backed up to tape.
2 Who did you speak to when they referenced tape?

3 A. I think it was Dave Ewan, sorry that's a lawyer's
4 name of mine. I'm trying to remember the name of
10:00:00 5 the -- I can -- he used to work at the RCFL. I'm
6 drawing a blank on his name, but I called the RCFL
7 directly and asked them and then they --

8 Q. In this case you called the RCFL?

9 A. Yeah, because I wanted to make sure I had a good
10:00:18 10 image, that I had everything that I needed.

11 Q. And so you spoke to someone at the RCFL not the
12 U.S. Attorney's Office?

13 A. I think I spoke to someone at the U.S. Attorney's
14 Office first, Randy Kim, sorry, that's his name,
10:00:30 15 Randy Kim, and then, um, they -- they were kind of at
16 a loss because they didn't know that, you know, where
17 the file -- where the hard drives were potentially,
18 and whether or not they even still had them. And so
19 then I said well, you know, I'll call Randy and see
10:00:46 20 if -- because I have a somewhat good working
21 relationship with Randy who is head of the RCFL over
22 the local office, he is now gone, but I talked to
23 him.

24 Q. So in speaking with Randy Kim, was he the one
10:00:59 25 that referenced the backup tape?

1 A. He said it was likely that they probably retired
2 the drives and probably backed everything up or
3 archived it to tape which is fairly common.

4 Q. But he is no longer at the local RCFL?

10:01:11 5 A. Not locally, yeah. I think he was promoted,
6 yeah.

7 Q. Okay. You mentioned you received a native file
8 from the U.S. Attorney's Office. How large -- or the
9 native files. How large were those native files?

10:01:24 10 A. The native files were probably only about 15 gig.

11 Q. And what did they include?

12 A. The actual file types? It was, I think, mostly
13 pdfs. I think there was a few other -- I think some
14 Excel and Word docs, mostly things like that.

10:01:41 15 Q. And when was that request for the native files?

16 A. I think it was right when I got back from trial.
17 I think that would have been mid-April.

18 Q. You said that you received an e-mail from Daryl
19 Sam. When did you receive that e-mail?

10:01:57 20 A. Which e-mail?

21 Q. The one where he asked about certain trial
22 exhibits?

23 A. Um, I think it was last week. I think it was
24 early last week.

10:02:08 25 Q. You hadn't received an e-mail prior to last week?

1 A. Not concerning exhibits. I had just given them
2 one of the productions and then I was showing them
3 how to use that database and the search things, and
4 he inquired to me as to whether or not I could find
10:02:23 5 some exhibits that he couldn't locate.

6 Q. Was Mr. Sam the one who gave you that hard drive
7 to review at the end of April?

8 A. No.

9 Q. Who was it that provided you with that hard
10:02:36 10 drive?

11 A. Um, Kaytlin Beckett.

12 Q. Okay. And referencing -- you said that there
13 were on this eight terabyte drive that was given to
14 you, there weren't eight terabytes worth of data, is
10:02:57 15 that right? Sorry, let me clarify. The copy that
16 was given to you by the U.S. Attorney's Office on
17 your eight terabyte drive?

18 A. Yes.

19 Q. The terabyte -- the eight terabyte drive didn't
10:03:09 20 have eight terabytes of data, is that correct?

21 A. No, it was not full. No.

22 Q. You mentioned there were certain file folders one
23 including an image file, correct?

24 A. The folder that had the name image, yes.

10:03:21 25 Q. Okay. And you also saw folders one titled Drew

1 Crandall, is that accurate?

2 A. Yes.

3 Q. And one titled Paz, in all caps. Does that sound
4 correct?

10:03:32 5 A. That is correct.

6 Q. Were there any iMac files within either the Drew
7 Crandall or Paz?

8 A. I think Crandall may have had an iMac as well. I
9 can look here. I see a Mac book I think a Mac.

10:03:49 10 Yeah, I think he had a -- it looks like some Mac
11 memory which is relatively small, I don't know if
12 that is a full image of a computer. Um, yeah, but I
13 can't remember any other folders that had the name
14 iMac in it. I think there was a few Mac books or Mac
10:04:06 15 memory. There is an iPad mini in here, I think a few
16 iPhones.

17 Q. You referenced an encrypted image, an E01 file.
18 Are you familiar with the cost of FTK imager?

19 A. Yes, I am.

10:04:23 20 Q. And what is that cost?

21 A. The imager is free.

22 Q. How about magnet imager? What's the cost of that
23 are you familiar?

24 A. I haven't used it.

10:04:32 25 Q. Okay. Are you aware that that is also a free

1 software for imaging a drive?

2 A. Yeah. The -- yeah.

3 Q. If there is a virtual machine operating on a
4 computer, how do the files from the virtual machine
10:04:45 5 appear in an E01 file?

6 A. In a virtual machine?

7 Q. If you have got a -- let's say you have got an
8 iMac --

9 A. Yeah.

10:04:54 10 Q. -- that is also running a virtual machine?

11 A. Yeah.

12 Q. If you do an image of that computer as a whole,
13 not just the virtual machine but the computer as a
14 whole, how do the virtual machine files appear?

10:05:08 15 A. Well, the parallel files, is that what you mean,
16 for the operating system is a different --

17 Q. Parallels would be an example of a virtual
18 machine. So if those files are password protected on
19 the virtual machine, how do they appear when you
10:05:22 20 image the computer as a whole?

21 A. I would imagine another E01 for the operating
22 system.

23 Q. And if they're password protected on the virtual
24 machine, how do those files appear?

10:05:31 25 A. They would be encrypted I mean. But like I say,

1 the image wouldn't be encrypted, I think the files
2 would be, but the image wouldn't be.

3 Q. So do you have any experience dealing with
4 virtual machines and there -- and how they are
10:05:49 5 encrypted in -- that is kind of essentially a shell
6 inside of the computer?

7 A. I haven't done too much of the like the imaging
8 of a -- well, I have done some but usually they're
9 servers and usually they haven't had any problem with
10:06:03 10 encryption on those things even though they are
11 encrypted and I mean every computer has an
12 encryption, that's why you log into it. Your have
13 pin number or whatever that log into. But like I
14 say, I've never had a secondary E01 file encrypted
10:06:19 15 whereas the primary was not.

16 Q. So to be clear, you don't have experience with a
17 virtual machine?

18 A. No, I don't.

19 Q. Files being encrypted while the rest of the
10:06:29 20 computer files are unencrypted?

21 A. Well, when you say computer files, I mean there
22 is always encrypted files on -- I mean a lot of
23 these, even software, will encrypt files so that you
24 don't damage your computer. And, you know, that's
10:06:43 25 the purpose of running a dictionary against it. When

1 you load an E01 file, one of the first things you do
2 is you run a dictionary and go through and it
3 captures key strokes and things like that, and with
4 the software. And then any encrypted file you have
10:06:59 5 will appear in red and it will say this is encrypted
6 and then you can run the dictionary against it and
7 then it will decrypt it. But as far as the image, I
8 mean you can't even -- an image you can't create a
9 dictionary from an image because you can't even open
10:07:12 10 the image if it is encrypted. But if it was
11 encrypted with File Vault specifically, which is I
12 think a software that the Government uses, but I
13 don't know, but maybe it could be somebody encrypted
14 it.

10:07:24 15 Q. Are you aware that File Vault is a commonly used
16 encryption program?

17 A. There is a lot of different encryption software.

18 MR. BURGGRAAF: Your Honor, at this time, in
19 relation to the motion to continue, I don't have any
10:07:36 20 further questions. I do have questions related to
21 the *Daubert* aspect or the *Daubert* motion.

22 I would qualify that by saying that part of
23 the *Daubert* hearing probably can't be taken care of
24 until a report is filed.

10:07:53 25 THE COURT: That seems to me like a better

1 time to do it.

2 MR. BURGGRAAF: And I may have another
3 question or two if you can give me just a minute.

4 THE COURT: All right.

10:08:15 5 Q. (By Mr. Burggraaf) On the initial hard drive
6 provided to you by Ms. Beckett, how many devices
7 would you say that accounts for?

8 A. Just Paz's stuff or everything?

9 Q. Everything.

10:08:30 10 A. Well, you can see here just the Paz stuff alone
11 is probably 30 or 40 different machines and then
12 there is quite a few others that were also on there
13 as well. I would say maybe 80 different variations
14 of images and hard drive back ups and things.

10:08:51 15 Q. And did you process every one of those?

16 A. I haven't finished -- I haven't gone through
17 everything yet, no.

18 Q. So are you aware of the -- scratch that.

19 As far as the files that were provided to
10:09:08 20 you that you have opened this week, the only files
21 that aren't there are -- that weren't previously
22 provided to you, there is only two of them, is that
23 right.

24 A. Yes.

10:09:22 25 MR. BURGGRAAF: Just one moment, Your Honor.

1 (Brief pause in proceedings.)

2 MR. BURGGRAAF: So Your Honor, as I
3 mentioned, I think the other *Daubert* related
4 questions are probably more appropriate once we have
10:09:51 5 a report. I would anticipate we would need a report
6 related beyond just computer forensics, we would also
7 be needing a report related to the other items
8 mentioned in the notice of expert. There is dark web
9 related references and cryptocurrency that I'm
10:10:09 10 inclined to ask him questions today if you would
11 like, but I think a report would be appropriate
12 first.

13 THE COURT: A report would be appropriate
14 first because then we would know what to ask about.
10:10:17 15 You really don't know that until you see what he
16 intends to testify about, right?

17 MR. BURGGRAAF: I agree.

18 THE COURT: All right. Redirect?

19 MS. BECKETT: Yes, Your Honor, just briefly.

10:10:24 20 **REDIRECT EXAMINATION**

21 BY MS. BECKETT:

22 Q. Mr. Wheeler, Mr. Burggraaf asked you a question
23 about some bugs in the FTA software -- FTK software.
24 Would a bug in the FTK software create a bad copy of
10:10:53 25 a hard drive in our office that matched a hard drive

1 that you received?

2 A. Yeah. You can't -- if you have no image to load
3 into the software, there is no way that you could
4 have a bug that would produce any sort of wrong
10:11:08 5 output.

6 Q. So regardless of any bug in the FTK software,
7 that image of the Luke Paz iMac was not the correct
8 size, right?

9 A. Yeah.

10:11:26 10 Q. Is the image that you received from the
11 Government, the other image regarding Mr. Paz's
12 computer not the iMac but I believe it's a Mac Book,
13 is that image still encrypted?

14 A. I haven't checked. I wanted to look at that one,
10:11:41 15 but I can see that I received another copy of it.

16 Q. Mr. Burggraaf asked you some questions about
17 updates and certification regarding the FTK software.
18 Do you remember those questions?

19 A. Yes.

10:11:55 20 Q. Now you stated that you had not updated your
21 certification on the FTK software. Do you have any
22 problems using the FTK software?

23 A. No. Usually the certification is for training.
24 If you want to train somebody else, you can actually
10:12:11 25 charge people to train the software yourself and

1 things like that.

2 And as far as the changes in features, I
3 mean they're usually -- it is still pretty similar.

4 It has essentially the same process it always has, I

10:12:26 5 mean a few different, you know, like a little faster,
6 you know, it will run a little bit more smoothly,

7 but, you know, I haven't had any problem.

8 Q. So the certification is not necessary would be
9 your opinion?

10:12:38 10 A. I wouldn't -- to use the software is pretty
11 intuitive.

12 Q. Now I believe you looked at a document, you're
13 reviewing your summary of the two separate files that
14 you received?

10:12:49 15 A. Yeah.

16 Q. If the file transfers themselves of that
17 particular forensic image had been a bad copy because
18 of verification or not having the proper software,
19 would the entire hard drive look like this or would
10:13:09 20 it look differently?

21 A. Well that's -- that's one of the reasons why I
22 included file paths so you could see that the names
23 of the folders are even different and different
24 places. And although they, like you say, when you
10:13:23 25 copied them or whatever copy you had given me,

1 whoever made that copy, the majority of the files
2 copied over just fine and they were the exact same
3 thing although they were in different places. But
4 like I say, the strange thing was the -- the Luke Paz
10:13:40 5 iMac folder was not -- there was no folder name with
6 that and then the new folder was called image so --

7 Q. And there were how many computers and devices
8 that were on here?

9 A. Like I say, I think including the other
10:13:55 10 discovery, other than Paz's and such, I think it was
11 probably about 80 computers and phones.

12 Q. But the only one that did not transfer was the
13 image of Mr. Paz's iMac, correct?

14 A. Apparently, yeah.

10:14:11 15 Q. Is that something that in your opinion would be a
16 result of a lack of verification or software?

17 A. No. If it was a copying problem, the folder name
18 would still be the same, just the contents would be
19 different, the file sizes. I mean even the image
10:14:26 20 names would be the same, I mean you would just have a
21 bad image. Because the E01 file, the one when you
22 image a computer, especially a large computer like
23 this, I mean you can see that most hard drives people
24 have are, you know, very large terabytes. You want
10:14:41 25 to break down the E01 into usable pieces because you

1 don't ever get an E01 file that's a terabyte. I mean
2 it would be really hard to manage a file that large.
3 So the software breaks it down into 30 or 40
4 different subparts.

10:14:56 5 Q. So when you received the correspondence from the
6 U.S. Attorney's Office indicating the files size was
7 that 1.8 or 1.9 terabytes, did you believe that that
8 would have included all of these devices that relate
9 to Drew Crandall and Luke Paz?

10:15:13 10 A. Are you referring to the e-mail that was given
11 saying to compare the two?

12 Q. Correct.

13 A. I would assume, yeah.

14 Q. Does 1.9 or 1.8 terabytes account for the
10:15:25 15 information that you received this week?

16 A. No. Because I would assume that if you had a bad
17 copy that you had made, it would have been like -- it
18 would have still had everything else, it would have
19 been probably 1.2 or something terabyte. But the
10:15:38 20 difference -- I mean the image that we received
21 wasn't even 1.9 alone, it was 2.8.

22 Q. The image of the one computer?

23 A. Exactly. So the e-mail said we are -- our folder
24 is 1.9. Kaytlin, could you check against your folder
10:15:54 25 and see if it is the same size. And then when I

1 received the image, it was actually 2.8 just for the
2 iMac image alone.

3 Q. But the combination of the Crandall and the Paz
4 file was how much by your calculation?

10:16:10 5 A. The total was 4.4 terabytes of everything.

6 Q. And just I believe --

7 A. Sorry, I think I misspoke. 6.2.

8 Q. Which is significantly larger than 1.9 or 1.8,
9 correct?

10:16:25 10 A. Yes.

11 Q. About how long would it take you to process just
12 the 2.83 terabytes of the one computer?

13 A. Well, like I say, I mean it depends on what is on
14 the computer. I mean if I get, you know, OST or
10:16:39 15 e-mail files, it could be millions of e-mails, I mean
16 literally millions of e-mails to go through with that
17 and I'm not sure if these guys used Outlook, I
18 haven't seen too many OST or PST files, but I would
19 imagine that it would take me a couple of weeks to go
10:16:55 20 through everything and I'm also, you know, now I'm
21 worried that there is some stuff I have may have
22 missed, you know, I am going to go through it with a
23 fine tooth comb.

24 MS. BECKETT: That's all I have, Your Honor.
10:17:08 25 Thank you.

1 THE COURT: Any redirect?

2 MR. BURGGRAAF: If I may, Your Honor?

3 THE COURT: Or yeah, re-cross.

4 **RECROSS-EXAMINATION**

10:17:12 5 BY MR. BURGGRAAF:

6 Q. When you referenced the files that you received
7 as of this week, you confirmed that there was a Drew
8 Crandall folder and a Paz folder, all caps?

9 A. Yes.

10:17:25 10 Q. Did you -- combined, do you know what the file
11 size of those two are combined?

12 A. You mean to compare with what I originally
13 received or --

14 Q. No, just those two file folders and their
10:17:38 15 contents, do you know what the sizes are combined?

16 A. Well, you can subtract the 2.8 from the 6.2, so a
17 little less than four.

18 Q. Are you actually aware that those two combined
19 are less than 1.98 terabytes?

10:17:57 20 A. I would take your word for it.

21 Q. Okay. You mentioned process time. If you had
22 additional assistance is there a way to cut that
23 process time down?

24 A. Yeah. I mean -- I mean, well, I mean you can
10:18:17 25 only have the computer open on one device at a time.

1 I mean I suppose if I had multiple licenses I could
2 essentially -- I'm trying to think if whether or not
3 actually probably not because the only thing that
4 would make it faster is like you said, if the
10:18:34 5 recommended computer, not the minimal computer but
6 the recommended computer, would just make the absorb
7 -- I mean the initial absorbing of the image and
8 loading into the software faster.

9 Q. So related to process time, if you had a faster
10:18:51 10 computer at your disposal, would that -- would that
11 help to speed up the process time?

12 A. I suppose, yeah. It would probably make it a
13 little faster. Instead of taking eight hours to
14 absorb it would probably take six or five.

10:19:05 15 Q. In your work have you worked with portable case
16 files before?

17 A. Yeah. Yeah.

18 Q. Have you worked with an Axiom Portable case file
19 before?

10:19:14 20 A. No, not particularly.

21 Q. Your ultimate end goal, you said, was to get the
22 files in a usable format for paralegals and attorneys
23 to be able to use. Is that right?

24 A. Yes.

10:19:28 25 Q. Would it -- would it speed up the process if a

1 portable case file was given, was provided?

2 A. I suppose if it contained -- I mean, yeah.

3 Essentially it would be what I was requesting

4 initially for a year of natives, you know,

10:19:49 5 essentially the same thing. I mean that would be

6 nice. I mean even when I requested -- when they were

7 making this second copy of the hard drive I again

8 requested I'm like, you know, those exhibits that

9 Daryl had asked me to find weren't even in the

10:20:06 10 original batch of natives that were given me, and

11 they weren't even Bates numbered. So I was like

12 could I get those as well to make sure that we have

13 everything? Because ultimately, the most important

14 thing for me is not -- I mean, I just want to make

10:20:19 15 sure they have everything and make sure that they

16 have -- I don't care whose fault -- I mean you can

17 blame me and say I did something wrong, essentially

18 that's the first thing I always think. You know, I'm

19 like okay, I must have done something wrong, let me

10:20:30 20 go back into it again. But, um, yeah, I mean I just

21 -- if you want to help me out great. Great, please.

22 Q. So if we gave you -- if the Government gave you

23 the files in a portable case file, wouldn't that be

24 in a usable format that you could then just verify

10:20:46 25 and hand off to defense counsel?

1 A. That would be very useful. Again, assuming
2 though I mean what you guys deem is important is also
3 different from what they might deem is important.
4 But that would help, I'm sure it would.

10:20:57 5 Q. Hence, if you were able to verify and confirm
6 that it was properly created, the portable case file
7 was properly created?

8 A. Yeah.

9 MR. BURGGRAAF: No further questions.

10:21:07 10 THE COURT: Thank you. Anything else?

11 MS. BECKETT: No, Your Honor.

12 THE COURT: You may step down, Mr. Wheeler.

13 Thank you.

14 THE WITNESS: Thanks.

10:21:14 15 THE COURT: Now do you want to talk to me
16 about the continuance? Let me tell you what I'm
17 really not interested in. I don't care about blame,
18 that doesn't make any difference to me. In most of
19 these cases there is blame here and blame there and
10:21:33 20 human error and all sorts of misunderstandings. What
21 I care about is can -- can this Defendant, if we
22 proceed on the 17th of June, can this Defendant
23 receive a fair trial?

24 As I understand it, the Government is
10:21:51 25 contending in part that there is a CCE as we call it,

1 a Continuing Criminal Enterprise, correct me if I'm
2 wrong, and that this Defendant is a leader of it.
3 And that makes a lot of difference whether you're
4 involved in it or a leader of it.

10:22:08 5 And what if, and I don't know what is in
6 there, and I don't know if you do, but they don't,
7 and what if we go ahead on the 17th of June, and as
8 the defense is able to get through these files it
9 turns out that -- that I guess they're claiming or
10:22:31 10 going to suggest or argue that Paz or Crandall or
11 perhaps somebody else was actually the leader, and
12 there is a lot of evidence about that and it's not
13 available to them on the 17th of June.

14 We don't want to have a trial and then have
10:22:48 15 to have another trial after reversal, so talk to me
16 about -- about the realistic possibilities here. I
17 would rather have a fair trial than a quick trial
18 even though I know that this has dragged on and we
19 have -- dragged, dragged --

10:23:06 20 MS. BECKETT: At this point we can use both
21 of those, Your Honor.

22 THE COURT: I think they're both acceptable,
23 I'm not sure which is preferred. Anyway, talk to me
24 about that. That's what I'm interested in.

10:23:20 25 MS. BECKETT: Your Honor, I think you hit

1 the nail on the head. With the CCE count there are
2 multiple issues that we're looking at. What makes
3 the potential punishment in this case so high is a
4 couple of things, the money, and the type of drug and
10:23:35 5 the amount of drug.

6 The two exhibits that the Government has
7 pulled from Mr. Paz's iMac discuss both money and
8 specifically the fentanyl. And part of Mr. Shamo's
9 defense deals with who was actually responsible for
10:23:49 10 those things and what his role is. As Your Honor
11 pointed out, a continuing criminal enterprise charge
12 requires the Government to establish a significant
13 number of those elements and I think we are at a
14 significant disadvantage and Mr. Shamo runs a risk of
10:24:02 15 not having a fair trial if we are not allowed to
16 examine that computer in its entirety.

17 And part of that concern for me comes from
18 the fact that those two documents reference specific
19 dates which makes me think there are more documents
10:24:16 20 that outline more dates. And I think that undercuts
21 Mr. Shamo's role and I also think it significantly
22 undercuts his connection to the actual fentanyl which
23 is the drug in question here.

24 THE COURT: Or as least it may.

10:24:32 25 MS. BECKETT: Correct. That is our

1 position. And that's what our big concern is. And
2 that is why when we discovered that the Government
3 actually had Mr. Paz's computer in their possession,
4 which did not happen until the end of 2018, we wanted
10:24:44 5 to have that reviewed. That has been our intention.
6 That is one of the specific purposes in which we
7 retained a computer forensic examination of those
8 hard drives was to look specifically at Mr. Paz's
9 electronic devices. And for us not to have that at
10:24:59 10 this point is too much of a risk and I don't think
11 that Mr. Shamo would have a fair trial if we weren't
12 at least allowed a proper amount of time to not only
13 process the data but to have legal eyes look at it
14 and analyze the information that's there.

10:25:16 15 THE COURT: Thank you. Mr. Burggraaf?

16 MR. BURGGRAAF: And Your Honor, I think that
17 the motion to continue essentially contains two
18 issues and I think the Court is very aware that
19 essentially we're looking at adequate effective
10:25:30 20 preparation for trial. And that one of the main
21 issues is making sure that the defense is able to
22 effectively and adequately prepare for trial.

23 THE COURT: But I assume the Government
24 would have the concern there as well.

10:25:45 25 MR. BURGGRAAF: We want them prepared and to

1 have the opportunity to look at that, those files,
2 just like they do. But I have one separate issue
3 that in ruling on the motion to continue, we would be
4 asking the Court make a finding that there actually
10:25:59 5 wasn't a *Brady* related violation.

6 THE COURT: That there what?

7 MR. BURGGRAAF: That there wasn't a *Brady*
8 related violation, just merely because the allegation
9 is there and then repeated in the reply. But in
10:26:08 10 regards to helping the defense to have time to
11 effectively review it, I would propose a solution
12 that allows for us to go forward on the 17th.
13 Essentially, we continue the *Daubert* Examination of
14 Mr. Wheeler until he has had an opportunity to
10:26:27 15 provide a report and direct him to actually provide a
16 report. The State, or excuse me, the United States
17 would stipulate to not calling Mr. Paz in their case
18 in chief up until defense has had the opportunity to
19 review, to make a full review of the iMac files.

10:26:50 20 THE COURT: One of the problems is we don't
21 know exactly how long it will take them to do that.

22 MR. BURGGRAAF: And Mr. Wheeler spoke to two
23 weeks to provide them with -- to provide the files in
24 a file format that they could then start reviewing.
10:27:05 25 I would propose the one of two options. Either one,

1 we direct that additional CJA funds be provided so
2 that they can get either additional help or
3 processing speeds so they can speed that up, or the
4 other alternative --

10:27:21 5 THE COURT: That would only take about two
6 weeks to get that approved.

7 MR. BURGGRAAF: The other alternative which
8 I think may be preferable, which has two parts to it,
9 but essentially it is the United States giving them a
10:27:32 10 processed file which we could do within a -- within
11 probably within a day or two we could give them a
12 processed file so they could start looking through
13 now. Or if they're not comfortable receiving a
14 processed file, then Mr. Wheeler in conjunction with
10:27:49 15 our expert could come and utilize one of their higher
16 speed computers that would allow them to create a
17 file format that would be usable within less than a
18 week. But that would allow defense, within a week,
19 to be looking through these computer files and they
10:28:09 20 can verify, it is not merely two exhibits that come
21 from Mr. Paz's iMac, there are multiple. There is a
22 section of them that have been admitted. And so I
23 think that that second option might be preferable.
24 It would allow Mr. Wheeler to be involved if he wants
10:28:23 25 to, or alternatively if they're comfortable with us

1 providing a processed file format that they can just
2 start immediately looking through we could do that as
3 well and that would allow us to keep the trial date
4 on schedule. We wouldn't call Mr. Paz until they
10:28:37 5 have given us the confirmation they have had the
6 opportunity to go through the files.

7 THE COURT: What is your reaction to the
8 second proposal?

9 MS. BECKETT: The extended time frame or the
10:28:49 10 assistance, Your Honor, I apologize.

11 THE COURT: The first proposal was to get
12 more money and more help which I have no confidence
13 in. At least -- at least in the timetable we're
14 dealing with.

10:29:04 15 MS. BECKETT: And that would be our concern
16 as well.

17 THE COURT: The second proposal was to get
18 you a bunch of, in my language, souped up gizmos and
19 more help from the U.S. Attorney -- the U.S.
10:29:17 20 Attorney's Office.

21 MS. BECKETT: Our big concern there is, Your
22 Honor, that even if we agree that the Government is
23 not calling Luke Paz --

24 THE COURT: That was part of it as well.

10:29:29 25 MS. BECKETT: -- until a certain amount of

1 time, I don't know that Luke Paz is the only person
2 that I'm going to have concerns and questions about
3 based on the information from that computer. I
4 understand that this case has languished. I think
10:29:42 5 obviously this side of the courtroom understands that
6 a little bit more personally dealing with the
7 defendant who is -- who has been incarcerated the
8 entire time. But I don't see how I can ethically
9 agree that it's okay to go forward on the 17th and
10:29:59 10 just hope I don't find something about somebody that
11 has already been called and then have to recall that
12 person because something subsequently comes up.

13 This is a conspiracy case that deals with
14 multiple defendants. In fact, Mr. Paz is not even a
10:30:13 15 defendant in this case, he was a defendant in another
16 case. So my concern is that there is information in
17 there that may deal with people other than just
18 Mr. Paz.

19 THE COURT: Nobody wants to get this done
10:30:26 20 more quickly than I do, I don't think, but I am very
21 concerned. Mr. Burggraaf?

22 MR. BURGGRAAF: Your Honor, I believe
23 that --

24 THE COURT: Again, I'm not blaming anybody.

10:30:38 25 MR. BURGGRAAF: No. And I agree we're in

1 in --

2 THE COURT: And I make a finding that there
3 were no *Brady* or *Giglio* violations.

4 MR. BURGGRAAF: Um, Your Honor --

10:30:47 5 THE COURT: Does that calm your heart some?

6 MR. BURGGRAAF: It makes it pitter patter a
7 little bit faster so that helps. What I -- what I
8 think Ms. Beckett is referencing though more goes to
9 their theory, their defense theory, which would allow
10:31:03 10 them to recall those witnesses which they have
11 listed, um, but I would stipulate that once that
12 review is completed, that they can recall any of the
13 United States witnesses for the purpose of further
14 questioning if they found it was needed.

10:31:18 15 THE COURT: What do you say to that?

16 MS. BECKETT: I think it would create the
17 same hiccup that -- that a general continuance would
18 create in that it will still expand the timeframe and
19 push it out further depending upon who we do and
10:31:35 20 don't have to recall.

21 THE COURT: It might take longer to try.
22 And I hate to continue it, but I could start a trial
23 on August 12th, then you can all tell me you have got
24 trips to Europe planned.

10:31:56 25 MR. BURGGRAAF: The difficulty we have

1 nailing down a date right now if we were to continue
2 it is we have quite a few individuals from
3 out-of-state, and 45 witnesses to coordinate
4 schedules with. I know of one of our witnesses for
10:32:10 5 sure that we need to give greater notice than merely
6 pushing it to the 12th.

7 THE COURT: Than the 12th of August?

8 MR. BURGGRAAF: Yes.

9 THE COURT: You're saying if I'm going to
10:32:26 10 move it I need to move it further, is that what
11 you're telling me?

12 MR. BURGGRAAF: Well, what I would suggest
13 is if you're going to move it say to August 12th,
14 that maybe we have a status conference next week so
10:32:37 15 that gives us a week to confirm with witnesses
16 whether they --

17 THE COURT: That's fair enough.

18 MR. BURGGRAAF: -- whether they can make it
19 available or not.

10:32:44 20 THE COURT: I have to be in Washington on
21 Monday, Tuesday, and Wednesday, but we could have a
22 status conference Thursday or Friday.

23 THE CLERK: Friday.

24 THE COURT: Friday. I think -- I think I
10:32:55 25 have to move it and the reason is, again, no

1 violations. Um, this is -- this is a serious case
2 with serious implications and serious potential
3 penalties as we all know. And I just think that --
4 that they need perhaps a more measured timeframe to
10:33:21 5 review these documents and decide how they really
6 want to attack and defend. And I am so reluctant to
7 do this, I feel like I have accumulated split
8 personalities here. But, all right, so I am going to
9 move it to August 12th, is the second Monday in
10:33:48 10 August, is that right?

11 THE CLERK: Yes.

12 THE COURT: Subject to the witness problem.
13 I can't do it in September. I could do it in October
14 if we need to -- if August doesn't work.

10:34:02 15 MR. BURGGRAAF: And I know that at least one
16 of our experts has an issue with October. So if
17 August 12th moving forward doesn't work then we will
18 look at some other dates.

19 THE COURT: All right. Does the -- do the
10:34:20 20 witnesses you're talking about or the witness you're
21 talking about, are they -- are they the October
22 person or persons, are they unavailable all month
23 or --

24 MR. BURGGRAAF: That is Mr. Gino which you
10:34:34 25 heard from yesterday, he is actually in trial that

1 month.

2 THE COURT: Yes. I see. So it may be all
3 month.

4 MR. BURGGRAAF: He expressed to us
10:34:40 5 yesterday, knowing that we were arguing a motion to
6 continue if it was continued that October would be
7 out because he has a four or five-week jury trial.

8 THE COURT: All right. Next Friday we will
9 see you at what time?

10:34:50 10 THE CLERK: At 11:00 a.m.

11 THE COURT: 11:00 a.m. Friday. Now let me
12 make a couple of other comments here. I ruled on
13 those pictures yesterday. I should suppose warn the
14 defense that I can envision a circumstance that your
10:35:13 15 cross might elicit those pictures allowable on a
16 rebuttal. Just so you understand that is a risk.

17 MS. BECKETT: Understood, Your Honor.

18 THE COURT: And Mr. Wheeler is going to
19 provide a report. I suppose it is less urgent now
10:35:31 20 about the timing and then Mr. Shafto or Ms. Shafto.

21 MS. BECKETT: Correct, Your Honor, it is
22 anticipated we will have that pretty quickly as well.

23 THE COURT: A report will be forthcoming.

24 And then we'll see whether we have to have *Daubert*
10:35:43 25 hearings. And you're still going to get me, at some

1 point now less urgent, a summary of the indictment,
2 right?

3 MS. BECKETT: Yes, Your Honor.

4 MR. BURGGRAAF: Yes, Your Honor.

10:35:53 5 THE COURT: And at some point what
6 instructions you can agree on and what ones you're
7 contesting and why. All right. I can't think of
8 anything else but you can.

9 MR. BURGGRAAF: I sure can, Your Honor.
10:36:06 10 Just because we are continuing the trial date we
11 would ask that the Court exclude time. As has been
12 made evident, it is a complex case, there is a volume
13 of discovery and the Defense needs additional time.

14 THE COURT: Well, and the Defense has made
10:36:21 15 the motion. So you're right, it is a complex case,
16 they need the time, they have made the motion, the
17 time is clearly excluded under the Speedy Trial Act.

18 MR. BURGGRAAF: Would you like us to prepare
19 an order to that effect?

10:36:33 20 THE COURT: Yes, would you please. All
21 right. Anything else?

22 MS. BECKETT: No, Your Honor.

23 MR. STEJSKAL: No, Your Honor.

24 MR. BURGGRAAF: Will we be receiving a new
10:36:43 25 trial order?

1 THE COURT: Yes. We will do a new trial
2 order. Yes.

3 MR. BURGGRAAF: Okay. Thank you.

4 THE COURT: Thank you. We'll be in recess.

10:36:49 5 And I -- I am sorry I did that, but I think it is the
6 right thing to do.

7 MR. STEJSKAL: Thank you, Your Honor.

8 MS. BECKETT: Thank you, Your Honor.

9 (Whereupon, Court adjourned at 10:36 a.m.)

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REPORTER'S CERTIFICATE

I, Laura W. Robinson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the County of Salt Lake, State of Utah, do hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof I have subscribed my name this 14th day of December, 2020.

Laura W. Robinson
RPR, FCRR, CSR, CP